V & S Schuler Engineering, Inc. and United Steelworkers of America, AFL–CIO, CLC. Case 8–CA–31342

November 9, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

Pursuant to a charge filed on February 17, 2000, the General Counsel of the National Labor Relations Board issued a complaint on March 22, 2000, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish information following the Union's certification in Case 8–RC–15856. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On September 19, 2000, the General Counsel filed a Motion for Summary Judgment. On September 20, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On October 6, 2000, the Respondent filed a response. The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its response, the Respondent admits its refusal to bargain and to furnish information to the Union, but attacks the validity of the certification on the grounds that the Board erroneously sustained the Union's objections to the first election and erroneously overruled the Respondent's objections to the second election in the representation proceeding. In addition, the Respondent contends that the 9-month delay between the Respondent's refusal to bargain and the filing of the General Counsel's motion for summary judgment has prejudiced the Respondent because during that time the unit changed from 40 to 24 employees, 6 of whom were hired after the second election herein.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. Although the Respondent asserts that the 9-month delay between the refusal to bargain and the motion for summary judgment has prejudiced it because during that time the size and composition of the unit has changed and, therefore, it could be ordered to bargain with a union that has lost its majority status, we reject this argument. It is well established that employee turnover is not the kind of "unusual circumstance" within the meaning of the Supreme Court's decision in *Brooks v. NLRB*, 348 U.S. 96 (1954), that would permit rebuttal of the Union's majority status or warrant reexamination of its certification. See *Action Automotive*, 284 NLRB 251 (1987), enfd. 853 F.2d 433 (6th Cir. 1988), cert. denied 488 U.S. 1041 (1989); *Murphy Bros*., 265 NLRB 1574 (1982); *KI(USA) Corp.*, 310 NLRB 1233 fn. 1 (1993); *Shamy Heating & Air Conditioning,* 331 NLRB No. 34 fn. 1 (2000) (no defense to refusal to bargain where 6 of 11 unit employees left the unit after election and had not been replaced).

We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing regarding the Union's request for information. The complaint alleges, and the Respondent's answer to the complaint admits, that the Union requested the following information from the Respondent:

> The names and addresses of the bargaining unit employees; their age, years of service, rates of pay and classifications; copies of health, life, sickness, and accident insurance plans; copy of the pension plan; a list of benefits including holidays, vacations, profit sharing, severance pay, reporting allowances, shift premiums, overtime pay and bonuses; and financial information related to employment costs for the aforementioned benefits.

The Respondent denies that the requested information is relevant to and necessary for the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees. It is well established that such information is presumptively relevant for purposes of collective bargaining and must be furnished on request.[1] The Respondent has not attempted to rebut the relevance of the information requested by the Union.

Accordingly, we grant the Motion for Summary Judgment, and will order the Respondent to bargain with the Union and to furnish the Union with the information it requested.

On the entire record, the Board makes the following

[1] See, e.g., *U.S. Family Health Care San Bernardino*, 315 NLRB 108 (1994); *Trustees of Masonic Hall*, 261 NLRB 436 (1982); and *Verona Dyestuff Division*, 233 NLRB 109 (1977).

FINDINGS OF FACT

I. JURISDICTION

The Respondent, V & S Schuler Engineering, Inc., an Ohio corporation with an office and place of business in Canton, Ohio, has been engaged in the fabrication of steel products. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, sold and shipped from its Canton, Ohio facility goods valued in excess of $50,000 directly to points outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held September 17, 1999, the Union was certified on December 23, 1999, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time production and maintenance employees including fitters, welders, quality control inspectors, machine operators, shipping employees, yardmen, and maintenance employees employed at the Employer's 2240 Allen Avenue, SE, Canton, Ohio facility, but excluding all office clerical employees, all professional employees, confidential employees, managers, supervisors, and guards as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since January 11, 2000, the Union has requested the Respondent to bargain and to furnish information, and, since January 26, 2000, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after January 26, 2000, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co*., 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co*., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, V & S Schuler Engineering, Inc., Canton, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Steelworkers of America, AFL–CIO, CLC, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time production and maintenance employees including fitters, welders, quality control inspectors, machine operators, shipping employees, yardmen, and maintenance employees employed at the Employer's 2240 Allen Avenue, SE, Canton, Ohio facility, but excluding all office clerical employees, all professional employees, confidential employees, managers, supervisors, and guards as defined in the Act.

(b) Furnish the Union the information it requested on January 11, 2000.

(c) Within 14 days after service by the Region, post at its facility in Canton, Ohio, copies of the attached

notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 8 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 26, 2000.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[2] If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Steelworkers of America, AFL–CIO, CLC, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All full-time and regular part-time production and maintenance employees including fitters, welders, quality control inspectors, machine operators, shipping employees, yardmen, and maintenance employees employed at our 2240 Allen Avenue, SE, Canton, Ohio facility, but excluding all office clerical employees, all professional employees, confidential employees, managers, supervisors, and guards as defined in the Act.

WE WILL furnish the Union the information it requested on January 11, 2000.

V & S SCHULER ENGINEERING, INC.